

AO 120 (Rev. 3/04)

To:	Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court District of Nebraska on the following: ___ Patents or X Trademarks:

DOCKET NO.	DATE FILED	US District Court District of Nebraska
8:08-cv-00468-JFB-TDT	10/16/08	Omaha, NE
PLAINTIFF		DEFENDANT
Solutionary, Inc.		Panasas, Inc.
PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.
1. See complaint attached.	6.	11.
2.	7.	12.
3. 6,988,208	8.	13.
4.	9.	14.
5. 7,168,093	10.	15.

In the above-entitled case, the following patents(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY		
	Amendment	Answer	Cross Bill Other Pleading
PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	
1.	6.	11.	
2. 7,310,359	7.	12.	
3.	8.	13.	
4.	9.	14.	
5.	10.	15.	

In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT

CLERK	(BY) DEPUTY CLERK	DATE
Denise M. Lucks	s/ JAB	10/17/08

Copy 1—Upon initiation of action, mail this copy to Director

Copy 3—Upon termination of action, mail this copy to Director

Copy 2—Upon filing document adding patent(s), mail this copy to Director
Copy 4—Case file copy

computer industry service providers and Defendant's illegal infringement upon Solutionary's ActiveGuard® trademark is likely to cause substantial confusion in the marketplace.

41. Defendant's use of the counterfeit "ActiveGuard" mark in connection with its products and services falsely indicates or suggests to consumers that Defendant's "ActiveGuard" product and services originates from, is approved by, is sponsored by, is licensed by, or is otherwise affiliated with Solutionary.

42. Defendant's use of the counterfeit "ActiveGuard" mark in connection with its products and services falsely indicates or suggests to consumers that Defendant's "ActiveGuard" product and services contain, include or incorporate Solutionary's patented award winning ActiveGuard® technology.

43. The above described unlawful use of the false "ActiveGuard" mark by Defendant has caused confusion in the marketplace and has and will continue to deceive customers and prospective clients and customers of both Solutionary and the Defendant.

44. Defendant's unlawful infringement upon Solutionary's ActiveGuard® mark as described above has and will continue to cause dilution of the distinctive quality of the Solutionary mark.

45. Defendant's unlawful infringement and use of Solutionary's ActiveGuard® mark as described above has and will continue to impair Solutionary's ability to control the nature and quality of goods provided in connection with the Solutionary mark, and places its valuable reputation and goodwill beyond its control and into the hands of a remote company with the distribution capability to damage the famous Solutionary mark worldwide.

46. Defendant's unlawful infringement and use of Solutionary's ActiveGuard® mark has and will continue to unjustly enrich Defendant at the expense of Solutionary and by

misappropriating the goodwill developed by Solutionary in the ActiveGuard® mark at Solutionary's expense.

47. Defendant's unlawful infringement and use of Solutionary's ActiveGuard® mark has and will continue to unjustly enrich Defendant at the expense of Solutionary and by misappropriating the goodwill developed by Solutionary in the patented ActiveGuard® technology at Solutionary's expense.

48. Defendant's unlawful infringement and use of Solutionary's ActiveGuard® mark was and continues to be willful. Defendant had or reasonably should have had knowledge of Solutionary's famous ActiveGuard® mark, yet acted in reckless disregard of the likelihood of confusion and dilution that would result from Defendant's use of an identical mark to market Defendant's products and services.

49. Defendant has continued to unlawfully infringe upon Solutionary's ActiveGuard® mark despite having had actual notice of its infringement since at least December of 2007, and despite Solutionary's demand that Defendant cease using its false "ActiveGuard" mark.

50. Unless restrained by this Court, Defendant's unlawful acts will cause or continue to cause irreparable injury to Solutionary and to the public, for which there is no adequate remedy at law.

51. Defendant's unlawful conduct has and will continue to cause confusion in the marketplace regarding the incorporation of Solutionary's patented technology into Defendant's products or services, and/or the existence of an affiliation or sponsorship between Defendant and Solutionary.

COUNT I
Trademark Infringement
(15 U.S.C. § 1114)

52. Solutionary realleges and incorporates by reference the foregoing paragraphs of its Complaint as if fully set forth herein.

53. Defendant's unlawful use of the "ActiveGuard" mark as set forth above, constitutes and will continue to constitute unlawful infringement of Solutionary's registered ActiveGuard® mark in violation of the Lanham Act, including 15 U.S.C. § 1114.

54. Defendant's unlawful infringement of Solutionary's ActiveGuard® mark was and continues to be willful.

55. Solutionary has and will continue to suffer substantial injury as a result of Defendant's unlawful infringement of Solutionary's registered ActiveGuard® mark.

56. Solutionary is entitled to an injunction against Defendant pursuant to 15 U.S.C. § 1116 to enjoin future infringement of its registered mark.

57. By reason of the foregoing, Solutionary has been or will be irreparably harmed and damaged. Solutionary's remedies at law are inadequate to compensate for this harm and damage.

58. Solutionary is entitled to all additional remedies for Defendant's willful infringement of Solutionary's registered mark as allowed by 15 U.S.C. § 1117, including but not limited to, compensatory damages, Defendant's profits, treble damages, costs and attorney fees, and an order compelling Defendant to destroy all offending articles and marketing materials bearing the counterfeit "ActiveGuard" mark pursuant to 15 U.S.C. § 1118.

COUNT II

False Advertising and False Designation of Origin

(15 U.S.C. § 1125(a))

59. Solutionary realleges and incorporates by reference the foregoing paragraphs of its Complaint as if fully set forth herein.

60. Defendant's unlawful marketing and use of the "ActiveGuard" mark in violation of Solutionary's ActiveGuard® mark constitutes and will constitute a false representation or designation of origin that is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Solutionary with Solutionary, or as to the origin, sponsorship, or approval of Defendant's goods and/or services by Solutionary. Such actions constitute unfair competition and false designation of origin in violation of the Lanham Act, 15 U.S.C. § 1125(a).

61. Defendant's marketing of its false "ActiveGuard" mark in violation of Solutionary's registered ActiveGuard® mark was and continues to be willful.

62. Solutionary has and will continue to suffer substantial irreparable injury as a result of Defendant's advertising and marketing of its false "ActiveGuard" mark because said use will continue to cause confusion in the marketplace unless and until Defendant is enjoined from further use of the false and misleading "ActiveGuard" mark.

63. Defendant's unlawful conduct has and will continue to cause confusion in the marketplace regarding the incorporation of Solutionary's patented technology into Defendant's products or services, and/or the existence of an affiliation or sponsorship between Defendant and Solutionary.

64. Solutionary is entitled to injunctive relief pursuant to 15 U.S.C. § 1116 to enjoin Defendant from using the false "ActiveGuard" mark and causing further injury to Solutionary.

65. Solutionary is entitled to all additional remedies for Defendant's willful infringement of Solutionary's registered trademark as allowed by 15 U.S.C. § 1117, including but not limited to, compensatory damages, Defendant's profits, treble damages, costs and attorney fees, and an order compelling Defendant to destroy all offending articles and marketing materials bearing the counterfeit "ActiveGuard" mark pursuant to 15 U.S.C. § 1118.

COUNT III
Federal Trademark Dilution
(15 U.S.C. § 1125(c))

66. Solutionary realleges and incorporates by reference the foregoing paragraphs of its Complaint as if fully set forth herein.

67. Defendant's use of the false "ActiveGuard" mark in connection with its goods and services has and will continue to cause actual dilution of the distinctive quality and associated goodwill of Solutionary's famous registered ActiveGuard® mark in violation of the Lanham Act, 15 U.S.C. § 1125(c).

68. Defendant's use of the false "ActiveGuard" mark in connection with its goods and services was in willful and reckless disregard of the dilutive effect it would have on Solutionary's famous registered ActiveGuard® mark.

69. By reason of the foregoing, Solutionary has and will continue to be irreparably harmed and damaged. Solutionary's remedies at law are inadequate to compensate for this harm and damage.

70. Solutionary is entitled to injunctive relief pursuant to 15 U.S.C. § 1116 to enjoin Defendant from using the "ActiveGuard" mark and causing further injury to Solutionary.

71. Solutionary is entitled to all additional remedies for Defendant's willful infringement of Solutionary's registered trademark allowed by 15 U.S.C. § 1117, including but

not limited to, compensatory damages, Defendant's profits, treble damages, costs and attorney fees, and an order compelling Defendant to destroy all offending articles and marketing materials bearing the counterfeit "ActiveGuard" mark pursuant to 15 U.S.C. § 1118.

COUNT IV

Nebraska Trademark Dilution

(NEB. REV. STAT. § 87-140)

72. Solutionary realleges and incorporates by reference the foregoing paragraphs of its Complaint as if fully set forth herein.

73. Defendant's actions, as set forth above, and Defendant's unlawful use of Solutionary's famous registered ActiveGuard® mark dilutes or is likely to dilute the distinctive quality of Solutionary's famous mark in violation of NEB. REV. STAT. § 87-140.

74. Defendant's actions, as set forth above, in diluting Solutionary's famous ActiveGuard® mark was willful and in reckless disregard of the fact that Defendant's conduct would dilute Solutionary's registered mark.

75. Defendant's unlawful conduct has and will continue to cause confusion in the marketplace regarding the incorporation of Solutionary's patented technology into Defendant's products or services, and/or the existence of an affiliation or sponsorship between Defendant and Solutionary.

76. By reason of the foregoing, Solutionary has been or will be irreparably harmed and damaged. Solutionary's remedies at law are inadequate to compensate for this harm and damage.

77. Solutionary is entitled to injunctive relief pursuant to NEB. REV. STAT. § 87-140, to enjoin Defendant from using the false "ActiveGuard" mark, and from any and all efforts to

advertise or market its products or services which further dilute Solutionary's registered ActiveGuard® mark, and any and all additional relief authorized by Nebraska law.

COUNT V

Nebraska Deceptive Trade Practices Act

(NEB. REV. STAT. § 87-301 et seq)

78. Solutionary realleges and incorporates by reference the foregoing paragraphs of its Complaint as if fully set forth herein.

79. Defendant's unlawful marketing and use of the false "ActiveGuard" mark violates NEB. REV. STAT. § 87-302 by: (1) creating a likelihood of confusion or misunderstanding regarding the source, sponsorship, approval or certification of Defendant's services by Solutionary; (2) creating a likelihood of confusion or misunderstanding regarding an affiliation, connection or association with Solutionary's patented technology; and (3) misrepresents a sponsorship, approval, affiliation or connection with Solutionary and its security services that Defendant does not have.

80. Defendant's unlawful conduct has and will continue to cause confusion in the marketplace regarding the incorporation of Solutionary's patented technology into Defendant's products or services, and/or the existence of an affiliation or sponsorship between Defendant and Solutionary.

81. Defendant willfully engaged in the forgoing unlawful deceptive trade practices in reckless disregard to the fact that such practices were deceptive and misleading.

82. By reason of the foregoing, Solutionary has and will continue to suffer irreparable harm, injury and damages. Solutionary's remedies at law are inadequate to compensate for this harm and damage.

83. Solutionary is entitled to injunctive relief pursuant to NEB. REV. STAT. § 87-303 to enjoin Defendant from further use of the false "ActiveGuard" mark.

84. Solutionary is entitled to all other relief allowed by NEB. REV. STAT. § 87-303, including compensatory damages, loss of profits, attorney fees and costs.

COUNT VI

Common Law Unfair Competition

85. Solutionary realleges and incorporates by reference the foregoing paragraphs of its Complaint as if fully set forth herein.

86. Defendant's actions, as set forth above, and Defendant's use of Solutionary's registered ActiveGuard® mark constitutes or will constitute unfair competition under the common law of the State of Nebraska.

87. By reason of the foregoing, Solutionary has been or will be irreparably harmed and damaged. Solutionary's remedies at law are inadequate to compensate for this harm and damage.

COUNT VII

Unjust Enrichment

88. Solutionary realleges and incorporates by reference the foregoing paragraphs of its Complaint as if fully set forth herein.

89. Defendant's actions as set forth and Defendant's use of the Solutionary's registered ActiveGuard® mark provided a benefit to Defendant at the expense of Solutionary.

90. Defendant had knowledge and appreciation of the benefit conferred upon Defendant by their conduct.

91. It would be inequitable for Defendant to retain that benefit without payment to Solutionary.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury of all claims triable to a jury and requests a trial setting in Omaha, Nebraska.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court to enter judgment in Solutionary's favor and against Defendant as follows:

1. Enjoining Defendant, as well as their affiliates, officers, agents, servants, employees, attorneys, successors, assigns, and all those persons in active concert or participation with any of them:

- a. From using the false "ActiveGuard" name or mark for any purpose, including in connection with the promotion, advertising, offering, or sale of any product or service of Defendant, and from using any other designation that is confusingly similar to Solutionary's ActiveGuard® mark which is likely to cause confusion with the Solutionary mark, or dilutes or is likely to dilute Solutionary's registered mark.
- b. From using the false "ActiveGuard" name or mark in any advertising, marketing or promotional materials, including any website maintained by Defendant.
- c. From conspiring with, aiding, assisting or abetting any other person or business entity in engaging in or performing any of the activities referred to above.

2. Enjoining any use or proposed use of the false "ActiveGuard" name or mark by Defendant in any manner which causes confusion or is likely to cause confusion with Solutionary's registered ActiveGuard® mark, dilutes the distinctive quality of Solutionary's ActiveGuard® mark, and is likely to cause dilution of the distinctive quality of Solutionary's ActiveGuard® mark.

3. Enjoining the use or proposed use of the false "ActiveGuard" name or mark by Defendant causes confusion or is likely to cause confusion with Solutionary's patented ActiveGuard® technology.

4. Compelling Defendant to immediately remove and withdraw any and all references to "ActiveGuard" from any product, packaging material, website, brochure, newsletter, or any other advertising, marketing, or promotional material employed by Defendant, and to destroy any such materials bearing the false "ActiveGuard" name or mark.

5. Compelling Defendant to display for a period of one year a disclaimer notice on its website in a form acceptable to Solutionary disclaiming that neither Defendant, nor any of its products or services, is in any way affiliated with or endorsed by Solutionary, and that none of Defendant's products or services incorporate Solutionary's patented ActiveGuard® technology.

6. Compelling Defendant to send a notice by mail in a form acceptable to Solutionary to all current, past and prospective clients of Defendant who purchased or received marketing materials referencing the false "ActiveGuard" name or mark, disclaiming that neither Defendant, nor any of its products or services, are in any way affiliated with or endorsed by Solutionary, and that none of Defendant's products or services incorporate Solutionary's patented ActiveGuard® technology.

7. Compelling Defendant to account for and hold in trust for the benefit of Solutionary, all profits or increases in revenue resulting from its acts of infringement, dilution, unfair competition, and unjust enrichment, and that such profits or benefits be paid over to Solutionary.

8. Ordering Defendant to file with this Court and to serve upon Solutionary a report in writing and under oath setting forth in detail the manner and form in which Defendant has

UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

SOLUTIONARY, INC.,

Plaintiff,

vs.

PANASAS, INC.,

Defendant.

Civil Case No. _____

**COMPLAINT
AND DEMAND FOR JURY TRIAL**

Introduction

1. Plaintiff brings this action seeking injunctive relief and damages against Defendant for trademark infringement, dilution, and deceptive trade practices in violation of the Lanham Act, 15 U.S.C. §§1111 *et seq.*, including 15 U.S.C. §§ 1114, 1116, 1117, and 1125; NEB. REV. STAT. § 87-140; the Nebraska Uniform Deceptive Trade Practices Act, NEB. REV. STAT. § 87-301 *et seq.*; common law conversion and unjust enrichment.

The Parties

2. Plaintiff, Solutionary, Inc. ("Solutionary"), is a Delaware corporation engaged in interstate commerce maintaining its principal place of business in Omaha, Nebraska.

3. Solutionary conducts business in the computer services industry. More particularly, Solutionary is an industry-leading full service Managed Security Service Provider ("MSSP"). As described more particularly herein, Solutionary owns certain intellectual property, including patented technology and registered services marks. Solutionary conducts business throughout the United States and uses its service marks in interstate commerce.

4. Defendant, Panasas, Inc. ("Panasas"), is a Delaware corporation engaged in interstate and international commerce maintaining its principal place of business in Fremont, California.

5. Panasas is engaged in the computer services industry and does business throughout the United States and the world, with customers in England, France, Germany, Italy and China. Panasas maintains regional sales offices in Pennsylvania and Minnesota in the United States, and in England, Germany, and Belgium in the European Union.

6. As described more particularly herein, Defendant has infringed upon and violated certain intellectual property belonging to Solutionary while engaged in interstate commerce.

Jurisdiction and Venue

7. This Court has original subject matter jurisdiction over Plaintiff's federal trademark claims pursuant to 15 U.S.C. § 1121, and pursuant to 28 U.S.C. §§ 1331 and 1338(a). This Court has jurisdiction to grant injunctive relief for violations of the Lanham Act pursuant to 15 U.S.C. § 1116.

8. This Court has supplemental subject matter jurisdiction over Plaintiff's related state law claims pursuant to 28 U.S.C. §§ 1367 and 1338(b).

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because as more specifically pled herein: (a) Defendant is subject to personal jurisdiction in this district; (b) a substantial part of the events and omissions giving rise to the claims pled herein occurred in this district; and (c) the intellectual property rights owned by Plaintiff that are subject to the claims at issue in this litigation are situated in this district.

10. This Court has personal jurisdiction over the Defendant pursuant to NEB. REV. STAT. § 25-536, because, as more specifically pled herein: (a) Defendant has and continues to

transact business in the State of Nebraska; (b) Defendant has and continues to contract to supply services in the State of Nebraska; (c) Defendant regularly solicits and conducts business in the State of Nebraska; (d) Defendant has caused tortious injury in the State of Nebraska by acts and omissions committed by Defendant within the State of Nebraska; (e) Defendant has caused tortious injury in the State of Nebraska by a persistent course of conduct committed by Defendant outside the State of Nebraska; (f) Defendant has and continues to derive substantial revenue from the services rendered in the State of Nebraska; and (g) Defendant regularly and continuously directs its sales and marketing efforts to reach the State of Nebraska.

11. Defendant conducts business throughout the United States and Europe, and has contracted to provide services to customers located in Nebraska. For example, Defendant has, and upon information and belief, continues to conduct business with the University of Nebraska for computer storage systems at the Holland Computing Center located at the Peter Kiewit Institute in Omaha, Nebraska.

12. Defendant purposefully directs its marketing and sales activities throughout the United States and Europe, including marketing efforts directed at Nebraska.

13. Defendant maintains a public website (www.panasas.com) through which it markets its products and services to customers throughout the United States and internationally. The website contains contact information for potential customers to obtain additional information about retaining Defendant's products and services, including an electronic form for leaving contact information of potential clients. Defendant's public website is accessible and viewable within the State of Nebraska.

14. The public website maintained by Defendant advertises testimonials from clients and customers that Defendant has conducted business with interstate and international

commerce. The list of testimonials posted on Defendant's public website includes a testimonial from a representative of the Peter Kiewit Institute, an affiliate of the University of Nebraska and Panasas client.

15. Defendant markets itself as an international provider of storage solutions on its website. The "Corporate Overview" accessible from the Panasas website describes its products and services as a "virtually boundless storage system for High Performance Computing (HPC) organizations around the world."

16. As will be more specifically described herein, the public website maintained by Defendant contains numerous violations of a trademark owned by Solutionary. Because said violations are accessible and viewable within the State of Nebraska, and because said violations have and will continue to cause injury and harm to a Nebraska resident, this Court has personal jurisdiction over Defendant pursuant to NEB. REV. STAT. § 25-536.

17. The exercise of long-arm jurisdiction over the Defendant by this Court pursuant to NEB. REV. STAT. § 25-536 does not violate federal due process as guaranteed by the United States Constitution because, in light of the substantial interstate and international nature of Defendant's business activities, the exercise of long-arm personal jurisdiction by this Court would not violate "fair play and substantial justice." *Centurion Wireless, Inc. v. Hop-on Comm. Inc.*, 342 F.Supp.2d 832, 835 (D.Neb. 2004); *Quality Pork Internat'l v. Rupari Food Servs.*, 267 Neb. 474, 675 N.W.2d 642 (Neb. 2004).

Facts Common To All Claims

Solutionary's Exclusive ActiveGuard® Patent and Registered Trademark

18. ActiveGuard® is an award winning, patented IT security technology owned exclusively by Solutionary. ActiveGuard® is a proprietary technology that enables Solutionary

to quickly and cost-effectively analyze, address and report client security events, enhance organizational security posture, and reduce overall risk. ActiveGuard® features comprehensive data collection, advanced threat detection and prevention, real-time response, data mining and trending, and a compliance reporting engine.

19. Solutionary applied for and was issued several patents for its unique and proprietary ActiveGuard® technology, U.S. Patent Nos. 6,988,208; 7,168,093; 7,370,359. Solutionary is the exclusive owner of the patents for ActiveGuard® and Solutionary has not licensed the use of its ActiveGuard® technology to Defendant.

20. Solutionary began using the "ActiveGuard" mark in interstate commerce in July, 2000, and has continuously used the "ActiveGuard" service mark in interstate commerce since that time.

21. Solutionary registered "ActiveGuard" as both a trademark and service mark with the U.S. Patent and Trademark Office on November 12, 2002, and was granted Registration No. 2650283 for ActiveGuard®.

22. Among the distinctive and unique features of Solutionary's registered ActiveGuard® mark are the words "active" and "guard" conjoined without spacing and with irregular capitalization to form a single word: "ActiveGuard®."

23. Solutionary developed the patented ActiveGuard® technology and mark through considerable expenditure of time, effort and expense.

24. ActiveGuard® is among Solutionary's principal service offerings and is a fundamental component of Solutionary's success as an MSSP.

25. Solutionary's ActiveGuard® is a famous and distinctive mark. ActiveGuard® is a well known and respected security product and ActiveGuard® is a widely recognized mark in

the computer services industry. As a result of the quality of the ActiveGuard® product and Solutionary's substantial efforts to market its product, ActiveGuard® has received significant industry press coverage in computer service trade magazines. For example, *SC Magazine*, an industry periodical for information technology security professionals, published a review of ActiveGuard® and gave the service its "recommended" rating in 2007.

26. ActiveGuard® has received or has been nominated for several industry awards. In 2007, ActiveGuard® won "MSS Product of the Year" by *SC Magazine*. ActiveGuard® was nominated and is again a finalist for *SC Magazine's* 2008 "MSS Product of the Year" award. ActiveGuard® is also a nominated finalist for *Info Security Products Guide's* "2008 Global Excellence Award."

Defendant's Infringement Of Solutionary's ActiveGuard® Mark

27. Defendant has and continues to unlawfully market a product and service in conjunction with its storage solutions that Defendant calls "ActiveGuard." Defendant markets its "ActiveGuard" offering as "High Availability software, which improves overall data availability."

28. Defendant has and continues to use the counterfeit "ActiveGuard" mark on its advertising and marketing materials, product packaging materials and on its public website.

29. The false "ActiveGuard" mark employed by Defendant is identical to and indistinguishable from the ActiveGuard® registered mark owned by Solutionary, including the use of the words "active" and "guard" conjoined without spacing and with irregular capitalization to form a single word: "ActiveGuard."

30. In late 2007, Solutionary discovered that Defendant was infringing upon and diluting Solutionary's ActiveGuard® mark by using the mark "ActiveGuard" mark without

Solutionary's knowledge or permission. At that time, a product description of Defendant's "ActiveGuard™ High Availability Solution Implementation Service" was posted on Defendant's public website. A true and correct copy of said product description, which appears to show a February 2007 revision date, is attached hereto as Exhibit A. Therein, Defendant employs the "TM" trademark symbol in conjunction with term "ActiveGuard™." The disclaimer at the bottom of Exhibit C falsely stated that the term "ActiveGuard" was a trademark or registered trademark of Panasas, Inc.

31. On December 11, 2007, Solutionary wrote to Defendant to put Defendant on notice of Solutionary's patent and registered marks for ActiveGuard®, a true and correct copy of which is attached hereto as Exhibit B. Therein, Solutionary demanded that Defendant immediately cease use of its false "ActiveGuard" designation and warned Defendant that continued use of the false "ActiveGuard" mark would infringe upon and dilute Solutionary's registered ActiveGuard® mark.

32. On December 21, 2007, Defendant acknowledged receipt of Solutionary's December 11, 2007 letter in writing, a true and correct copy of which is attached hereto as Exhibit C. Therein, Defendant stated that it needed additional time to review Solutionary's demand and would respond after the first of the year.

33. Defendant did not cease using its false and misleading "ActiveGuard" designation. However, Defendant did alter its marketing materials to remove the "TM" trademark symbol from its references to "ActiveGuard".

34. As of October 16, 2008, Defendant is still marketing its false and misleading "ActiveGuard" designation on its public website. Attached hereto as Exhibit D is a true and

correct copy of a screen print from Defendant's public website printed on October 16, 2008, describing its "ActiveGuard" product.

35. A search of Defendant's own publicly accessible website returned more than ten (10) references to "ActiveGuard." A true and correct copy of a screen print taken from a search of Defendant's public website for the term "ActiveGuard" conducted on October 16, 2008 is attached hereto as Exhibit E.

36. An internet search for the term "ActiveGuard" on the worldwide web conducted on October 16, 2008, revealed results for Solutionary and Defendant, in addition to multiple entries relating to National Guard service. A true and correct printout of the Google™ search result conducted on October 16, 2008 is attached hereto as Exhibit F.

37. Defendant has and continues to unlawfully use the counterfeit "ActiveGuard" mark on advertising, printed marketing materials, products and packaging materials utilized by Defendant.

38. At no time has Solutionary granted license or permission to Defendant to use Solutionary's ActiveGuard® mark.

Injury to Solutionary and the Public

39. Solutionary has invested substantial effort and resources to establish its registered ActiveGuard® mark and associated goodwill, which Solutionary has the exclusive legal right to use. Solutionary has and will continue to suffer injury and harm if Defendant is not enjoined from continued infringement of Solutionary's intellectual property rights.

40. Defendant's infringement of the Solutionary ActiveGuard® mark occurs in the same markets and channels of trade as those utilized by Solutionary. The parties are both